

Supreme Court, U. S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. 76-931

ROBERT STOPS AND NORMA STOPS,
Petitioners,
v.

LITTLE HORN STATE BANK

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Montana

REPLY MEMORANDUM OF PETITIONERS

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STATEMENT

Petitioners file this reply to the memorandum filed by the United States. Petitioners believe the record is sufficient for review and that the United States misapplies the jurisdictional principles involved.

DISCUSSION

1. First, the Crow Tribal Court of Offenses is a court established pursuant to federal laws and regulations promulgated thereunder. See 25 U.S.C. §§ 2 *et seq.*, 25 C.F.R. Chap. 11. Next, at the time of the execution

involved here and pursuant to Crow Tribal Resolution 64-2 (App. 1c), the Crow Tribal Court entertained actions brought by non-Indian creditors and continues to do so. Finally, if this Court concludes the record is not sufficient to determine if a remedy was available in tribal court, this matter should be remanded to the Montana Supreme Court for further proceedings on this issue.

2. However, this Court has indicated that the first judicial inquiry is whether Congress has excluded a state from the exercise of the disputed jurisdiction. *Kennerly v. District Court*, 400 U.S. 423 (1971), *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973), *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463 (1976). The first determination is whether Congress preempted jurisdiction over judgment executions on the Crow Reservation and not, as the government contends (Br. 3-4), whether such an exercise infringes or undermines the authority of the Crow Tribal Court.

Here Congress preempted the jurisdiction. At the time of the execution in this case, jurisdiction was controlled by the provisions of the Indian Civil Rights Act of 1968, Section 402(a), 82 Stat. 79, 25 U.S.C. § 1322(a) & (b). In addition to precluding state jurisdiction over "civil causes of action arising in Indian country", the Act requires that the Tribe specifically consent to the imposition of any state civil laws having general application over persons or private property. The Crow Tribe has not so consented.

Yet, exercise by the state of its general regulatory authority to execute is an exercise of that jurisdiction specifically prohibited by Congress. In light of this, there is no need to complicate the issue here with the issue of personal jurisdiction or by waiting for a case that raises both issues as the government suggests (Br. 5-6).

Montana case law on Indian-State jurisdiction is conflicting (Pet. 13). Even in face of continued direction from this Court (*Fisher v. District Court*, 424 U.S. 382), the Montana Supreme Court continues to erode the principles of Indian jurisdiction and it now is impossible to litigate these issues without additional clarification.

CONCLUSION

Therefore, for the reasons set forth in the petition and this reply memorandum, the petition for a writ of certiorari should be granted. In addition, petitioner would submit that on the basis of preemption, this Court can summarily reverse the judgment of the Montana Supreme Court without further argument.

Respectfully submitted,

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